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## **Public Policy, Social Change, and the Ethics Triangle: Undocumented Immigrants and Higher Education in the United States**

**Matthew Collins<sup>1</sup>**

**Giselle Reid**

The institutions of higher education in the United States face the dilemma of deciding whether to admit and matriculate students without legal immigration status. This public policy question involves careful interpretation of federal and state law, general public sentiment, the effects on the individual institutions, as well as the plight of undocumented immigrant students and their parents. The purpose of this research was to analyze the ethical dilemma facing colleges and universities concerning whether to allow or deny admission to undocumented immigrant students, utilizing the ethics triangle. This research argued that the benefits of facilitating higher education for undocumented students would result in the betterment of society in the United States and the world as a whole because it is inequitable to discriminate against students based upon their immigration status. Finally, this research contends that it is morally unacceptable to deny any human being access to an education under any circumstances.

**Key Words:** ethics, immigration, higher education, social change

### **Introduction**

Currently, an estimated 11.8 million unauthorized immigrants, including 1.7 million immigrants under the age of 18, are living in the United States (Hoefer, Rytina, & Baker, 2008). In addition, an estimated 65,000 graduating high school students in the United States each year are undocumented (Drachman, 2006). Given the high numbers of undocumented immigrants in the United States, serious policy consideration needs to be given to the availability and access to higher education for this undocumented immigrant population. Like most policy issues, access to higher education for undocumented immigrants is a convoluted area of research. Policy models often are devised to make policy issues comprehensible and to facilitate an enhanced understanding of the policy issue. The purpose of this study was to use the ethics triangle as a

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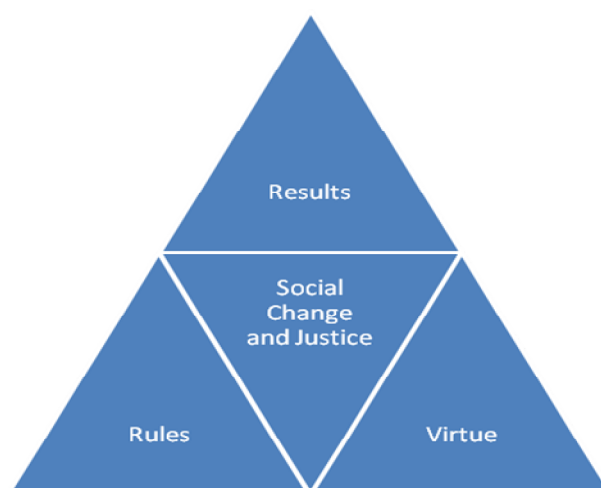
<sup>1</sup> Matthew Collins earned his doctorate in public administration and policy at Virginia Tech in 2003. Dr. Collins teaches public policy and administration at Walden University. Dr. Collins's research interests are in the intellectual history of American public administration, philosophy/ethics, local government, and homeland security/emergency management. Dr. Collins has been published in the academic journals *Administration and Society*, *Disaster Prevention and Management*, and *Journal of Emergency Management*.

Giselle Reid is a practicing immigration attorney and doctoral candidate who is studying public policy and administration at Walden University. Ms. Reid's research interests are immigration policy, social change, and action-oriented research to educate and empower marginalized target populations.

policy model to help to elucidate the most salient points regarding the policy issue of admitting undocumented immigrants to institutions of higher education in the United States.

### **Case Analysis Using the Ethics Triangle**

Given the social construction of reality, cultural and ethical norms have been malleable throughout the ages (Berger & Luckman, 1966). With paradigm shifts in thought and the constant creation of new societal mores, public policymakers often have been challenged to determine an ethical course of action. Policymakers can make use of many tools and models to militate against unethical decision making. The ethics triangle is one such model. The ethics triangle is a decision-making model utilized for the analysis of ethical dilemmas when there is no clear sense of right or wrong. The three points of the triangle represent three approaches to an ethical dilemma: results, rules, and virtue. When approaching a dilemma utilizing the results approach, the researcher should evaluate whether a decision would result in the utilitarian notion of the greatest good for the greatest number. The rules approach enables the researcher to examine whether the decision is just, fair, or equitable. The virtue approach allows the researcher to question whether the decision supports integrity of character (West & Berman, 2006). Each area of the triangle, which allows public policymakers to make decisions that effect social change and justice, is elaborated upon (see Figure 1).



*Figure 1.* Ethics triangle.

**Results**

In framing the problem utilizing the results approach, the main question is whether giving undocumented students the opportunity to pursue a higher education and pay in-state tuition would result in the greatest utilitarian good for the particular state. Falconer and Longo (2004) stated that in the case of the Great Plain states, namely, Nebraska, North Dakota, South Dakota, Kansas, and Missouri, where the weather is extremely harsh and the number of highly skilled workers is limited, those states would benefit greatly from a better educated workforce. Particularly valuable to those states would be more college-educated people in the service and information systems industries. Allowing immigrants to attend universities in those states could bring about sustainable economic development in the region and could positively impact the quality of life for all of the citizens in the region as new companies and business relocate there.

In opposition to this economic development argument is the notion that allowing admission and matriculation of undocumented students pursue higher education and pay in-state tuition is that the illegal immigrants would overburden the system. However, this argument is fallacious on several grounds because institutions of higher education also should be concerned with enrollment levels and the revenue that would be gained from additional students (Falconer & Longo, 2004). In addition, experts have predicted the advent of an eminent economic crisis precipitated by the lack of sufficiently educated and skilled workers entering the workforce (Watanabe, 2008). Therefore, providing access to a higher education to undocumented immigrant students could actually boost the economy by providing a better trained workforce with additional entrepreneurial-minded individuals who would create new jobs. This is the basis of the American Dream.

Furthermore, many Baby Boomers are concerned about dwindling social security revenues that have been earmarked for their retirement. Mark Silverman, director of Immigration Policy at the Immigration Legal Resource Center, stated that as a Baby Boomer, he would rather “have additional younger people paying into social security with a salary as an engineer rather than a salary as a landscaper” (personal communication, October 17, 2008). It is erroneous to argue against the notion that the addition of highly educated people in the United States would have a deleterious impact on the country. Actually, the United States would benefit greatly from having a better skilled workforce that is imbued with an entrepreneurial spirit. However, arguments to the contrary persist, and most are simply ad hominem attacks against immigrants.

### ***Rules***

Immigration laws are inherently biased against the majority of undocumented immigrant students. In an effort to penalize those who cross the border without inspection, the 1996 immigration laws made it extremely difficult, if not impossible, for those who entered unlawfully to ever become legal residents. The law provides for a 10-year bar to reentering the country if an undocumented immigrant accrues over 1 year of unlawful presence. That law also forces those individuals who entered the United States illegally to return to their home countries and apply for an immigrant visa. Upon returning home, the immigrants are usually barred from reentry. To qualify for a waiver to surmount this obstacle, the immigrants must demonstrate that they have a U.S. citizen or a lawful resident spouse who would suffer an extreme hardship from the immigrants being out of the United States. An undocumented college student is unlikely to have a U.S. citizen spouse who can prove extreme hardship.

Most Western European citizens are allowed to enter the United States for 90 days without obtaining a tourist visa. However, all other citizens from the rest of the world who apply for tourist visas or student visas have a difficult time and are frequently denied. It should be noted that temporary protected status currently is granted to immigrants from Burundi, El Salvador, Honduras, Nicaragua, Somalia, and Sudan because of the civil wars and natural disasters occurring in those countries.

However, current laws do not prohibit colleges or universities from admitting undocumented students. The U.S. Constitution granted Congress the power to establish laws concerning immigration. The U.S. Code (USC) addresses immigration laws and codifies other laws, including the Immigration and Naturalization Act, as amended. The Constitution allows states to retain the authority to make laws when not prohibited by federal law. According to Section 8 U.S.C. §1621, illegal aliens are specifically prohibited from receiving federal benefits, but otherwise, this code allows the states to enact laws according to their preference for or against admitting undocumented students into their institutions of higher education.

The North Carolina Community College System (NCCCS) faced the dilemma of the questionable legality of admitting undocumented immigrant students. Ultimately, the NCCCS requested clarification from the Department of Homeland Security through the attorney general. The U.S. Department of Immigration and Customs Enforcement responded to this request by stating that the individual states must decide for themselves whether to admit illegal aliens to

public postsecondary institutions. In the absence of state policy or legislation, it is up to the individual institutions of higher education to decide on this policy issue. Currently, nine states, including California, New York, Oklahoma, and Texas, allow the enrollment of undocumented students (Gorman, 2009). The attorney general recently advised Arkansas that it can admit illegal aliens (DeMillo, 2008). Other states, such as Virginia, oppose undocumented immigrant student admission (Borja, 2003).

### ***Virtue***

Within the institutions of higher education, men and women can explore every aspect of life on this planet. If immigrants are willing to pay for it, why should they be denied admission and matriculation based solely on the legal, socially constructed status of citizenship? Human beings, regardless of any territorial (violent or peaceful) conquest gained or lost by their ancestors, should be afforded the opportunity to pursue higher education. When U.S. Supreme Court Justice Brennan wrote the decision in favor of granting free public education to undocumented students, Justice Brennan stated that an opposite decision would “impose a lifetime hardship on a discrete class of children not accountable for their disabling status, the stigma of illiteracy will mark them for the rest of their lives” (*Plyer v. Doe*, 457 U.S. 202, 1982). The same logic that Justice Brennan applied to public education can be used to argue convincingly for access to institutions of higher education for undocumented immigrants.

### ***Social Change and Justice***

In an effort to foment social change and justice, the ethics triangle is a useful tool for policy analysis. First, the results section of the triangle makes a strong argument for the utilitarian benefits of admitting undocumented students to institutions of higher learning in the United States. Allowing undocumented immigrants to be admitted to institutions of higher education would result in a better trained workforce for those immigrants who have legally remained in the United States. It also would serve as an impetus for the economic development for other countries as other immigrants return to their home nations with degrees from American institutions of higher education. Second, the rules section of the triangle elucidates that although immigration laws regarding citizenship are inherently biased against the majority of undocumented immigrant students, individual states do have the legal authority to admit undocumented students to institutions of higher learning. That is an important consideration because as a 10<sup>th</sup> Amendment issue, this policy process will take place in each state. Finally, the

virtue section of the triangle explicates Justice Brennan's decision in favor of granting free public education to undocumented students. The same logic should be applied to higher education to allow undocumented immigrants to assimilate into the United States to enhance domestic economic development or to return home with the same mission in their countries of origin.

### Conclusion

The ethical triangle is not a conclusive tool; rather, it is a means to assess a policy issue from different viewpoints. It also can serve as a means to defend or explain why a particular conflicting ethical decision was made. The arguments made in this study were limited, and many more arguments and viewpoints could be generated. However, in this analysis, the final recommendation would be to give undocumented students access to higher education financed by in-state tuition from their own pockets or any private scholarships received. The result would undoubtedly benefit the world in general, even if the undocumented immigrants are eventually deported. It is categorically unfair to discriminate against undocumented immigrant students and to allow people, intelligent students in particular, to become stultified intellectually.

Even if the millions of undocumented immigrants never obtain legal immigration status in the United States, it is still in the best interests of the United States and the world as a whole to allow access to higher education to those who desire it. Many of the developing countries around the globe are suffering from extreme poverty. Instead of pouring money into international development, the United States should take the normative course of action to educate these undocumented immigrants and return them as highly skilled professionals to assist in the development of their own countries to promote sustainable economic development abroad. That goal would certainly work to ameliorate the concerns of those who want to limit the number of people flocking to the United States for assistance.

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